

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Implementation of the )  
Pay Telephone Reclassification and ) CC Docket No. 96-128  
Compensation Provisions of the )  
Telecommunications Act of 1996 )

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**OPPOSITION AND COMMENTS**

BellSouth Corporation, on behalf of its affiliated companies ("BellSouth"), respectfully files its Opposition and Comments to the Petitions for Reconsideration and Clarification of the Commission's Report and Order filed in this proceeding.<sup>1</sup>

I. LEC COIN TRANSMISSION SERVICES [¶¶146-147]

As BellSouth discussed in its own Petition for Clarification and Reconsideration, the coin transmission services which the Report and Order requires LECs to file in their interstate access tariffs are local exchange services, not access services.<sup>2</sup> The Public Utilities Commission of Ohio correctly agrees, stating that Section 276 of the Act does not give the Commission authority to require federal tariffing of such services.<sup>3</sup> Although the Commission would not have the authority

<sup>1</sup> In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, FCC 96-388, CC Docket No. 96-128, Report and Order, (Sept. 20, 1996), amended, Errata, DA 96-1623 (Sept. 27, 1996), Further Errata, DA 96-1666 (Oct. 8, 1996).

<sup>2</sup> BellSouth Petition at 6-18.

<sup>3</sup> Ohio PUC Petition at 3.

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to establish the specific prices and costs or the specific pricing and costing methodologies associated with such services, it could impose a nondiscrimination requirement that the services provided to a LEC's own payphone operations be made available to independent payphone operations on the same terms and conditions and at the same rates and charges.

The same is true with respect to any adjunct services that LECs may choose to offer as a part of the local exchange services they provide to payphone providers. Indeed, contrary to the suggestion made by the National Telephone Cooperative Association,<sup>4</sup> additional regulated services that may be provided by LECs to payphone providers by means of LEC's central office capabilities would appropriately be a part of the local exchange service provided, whether bundled or unbundled, and the Commission may not require their tariffing in the interstate access tariffs as interstate access services. Nevertheless, the Commission's requirement of nondiscrimination can still be imposed. For other services which are deregulated and detariffed, such as certain billing and collection functionalities, no tariffing is necessary, although, as the Commission itself properly recognizes, the Commission has authority to impose the requirement that such functionalities be offered on a nondiscriminatory basis where necessary in order for the payphone providers to function.<sup>5</sup>

Finally, Wisconsin Pay Telephone Association, Inc. ("WPTA") contends that the Act requires the Commission to discontinue the application of Subscriber Line Charges entirely, as to any payphone provider, in order to meet the Act's requirement for removal of subsidies from

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<sup>4</sup> National Telephone Cooperative Association Petition at 4.

<sup>5</sup> Report and Order at ¶ 149 and n. 514. Contrary to NJPA, Petition at 14, however, this would not be the case for installation and maintenance of the payphone CPE itself, as such functions can be provided by any number of vendors in the open market and, thus, payphone providers are not dependent upon LECs for such deregulated services. Accord Sprint Petition at 19-20.

payphone service.<sup>6</sup> WPTA is incorrect. The Act requires the removal of regulated charges which subsidize payphone CPE and nonregulated payphone operations, not the removal of regulated charges for regulated services. The Subscriber Line Charge is a regulated charge assessed to recover a portion of the regulated, interstate costs of regulated exchange lines, including payphone lines, and is, thus not required to be discontinued by the Act.

## II. REMOVAL OF SUBSIDIES [¶¶159, 183]

Sprint argues that the payphone costs to be reclassified should include “the local network used for payphone services, and local business expenses.”<sup>7</sup> But the Commission properly and sensibly rejected the proposal that local loops be reclassified, as the loops remain part of the LEC and not part of PSP operations.<sup>8</sup> The Commission was correct when it adopted rules that provide for the removal from regulated intrastate and interstate rate structures of all charges that recover the costs of payphone sets, but not including the costs of the lines connecting those sets to the public switched network, which, like the lines connecting competitive payphones to the network, will continue to be treated as regulated.<sup>9</sup> It should reject Sprint’s arguments to the contrary.

## III. GRANDFATHERED CONTRACTS [¶¶250-252]

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<sup>6</sup> WPTA Petition at 14-15.

<sup>7</sup> Sprint Petition at 19.

<sup>8</sup> Report and Order at ¶ 159. (All facilities related to payphone service, including associated depreciation and deferred income tax liabilities . . . [but not] the loops connecting the payphones to the network, the central office “coin-service,” or operator service facilities supporting incumbent LEC payphones because these are part of network equipment necessary to support basic telephone services,” whether LEC affiliated or not).

<sup>9</sup> Id. at ¶ 183.

AT&T requests that the Commission clarify that “nothing in the statute or the new rules allows location owners to terminate contracts with carriers regarding the interLATA PIC selection.”<sup>10</sup> AT&T goes on to further argue that a LEC which had payphones installed at a location prior to February 8, 1996 may not interfere with a carrier’s contractual rights by removing its phones during the term of the LEC’s then-existing pay-phone placement contract with the location owner. Because the Commission, in its Report and Order, determined that BOCs will not be allowed to engage in the conduct authorized by Section 276(b)(1)(D) until it has submitted and received approval of an initial CEI plan filed pursuant to Section 276(b)(1)(C),<sup>11</sup> AT&T requests the Commission to clarify that “contracts between BOCs and location owners that reference interLATA PIC choices but are executed prior to the approval of the BOC’s CEI plan are void and unenforceable against the location owner.”<sup>12</sup>

BellSouth agrees with AT&T to the extent that AT&T seeks a determination that nothing in the new statute or rules changes the voluntary obligations assumed by parties under otherwise valid and enforceable contracts under state law. However, the Commission has said all that it needs to say regarding the effect of the 1996 Act on contracts in force between location providers and payphone service providers or interLATA or intraLATA carriers which were in force and effect as of February 8, 1996, and in the absence of a statutory mandate, it need not, and should not, say anything about contracts entered into after that date.<sup>13</sup> AT&T is merely rehashing its arguments, properly rejected by the Commission, that the Commission should adopt certain broad

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<sup>10</sup> AT&T Petition at 22.

<sup>11</sup> Report and Order at ¶ 239.

<sup>12</sup> AT&T Petition at 23.

<sup>13</sup> Report and Order at ¶¶ 250-252.

definition of contracts, including letters of authorization and term extensions, effectively asking the Commission make sweeping legal determinations on the enforceability of commercial documents which are, as a practical matter, subject to the laws of 50 states.

Specifically, in its Petition, AT&T seeks a declaratory ruling that contracts “that reference interLATA PIC choices” and which are signed prior to approval of a BOC’s CEI plan are “void and unenforceable against the location owner.” The Commission should reject this request. The Commission has correctly left to applicable state law the question of whether a particular agreement constitutes an enforceable contract.<sup>14</sup> It would thus be inappropriate for the Commission to engage in such vague, peremptory action. If the Commission were to adopt AT&T’s proposal, the result would be a ruling that would be overbroad, would interfere with the jurisdiction of state courts, and would result in location providers being denied their choice of interLATA carriers.

As an example, if a location provider wanted to presubscribe to (“PIC”) AT&T as the *interLATA carrier for payphones from its location*, and also wished to obtain payphones from a BOC PSP, any contract for payphone services signed by the location provider and the BOC PSP which contains a “reference” to the location providers “interLATA PIC choices” (in this case, the decision to select AT&T), would be “void and unenforceable against the location provider” under AT&T’s proposal.<sup>15</sup> Even a contract between a BOC PSP and a location provider that acknowledged the location provider’s agreement to maintain AT&T as its presubscribed interLATA carrier for a term of years would be void and unenforceable under AT&T’s proposal.

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<sup>14</sup> *Id.* at ¶ 251.

<sup>15</sup> AT&T Petition at 23.

The Commission should not engage in such unnecessary and overly broad preemptive rulings. Applicable state law properly governs the enforceability of all agreements between location providers, payphone service providers, interLATA carriers, and intraLATA carriers. Moreover, the Commission essentially adopted AT&T's request that "interference with enforceable agreements between a location provider and either a payphone service provider or an interLATA or intraLATA carrier constitutes an unjust and unreasonable practice in violation of Section 201(b) of the 1996 Act."<sup>16</sup> The Commission has properly determined the relevant roles of the states and the commission with respect to determining both the enforceability of payphone service agreements and the effect of certain business practices on the operation of the market. It need not revisit the issue here.

In a footnote, AT&T references unidentified "reports" that representatives of BellSouth are already attempting to negotiate 0+ commission agreement that include interLATA calling with location owners, and that some of these location owners have apparently been informed that BellSouth can handle in-region interLATA calling from its payphones as soon as November 1996. BellSouth has long advocated the freedom for BOCs to engage in the activities authorized by Congress in Section 276(b)(D)(1) immediately upon the effective date of the Commission's regulations, but has appreciated that the Commission was given the opportunity to make a public interest determination with respect to any BOC's ability to engage in that conduct. Accordingly, in its contacts with location providers, BellSouth has not promised to provide or arrange for such service by any particular date, but has always made clear that any agreements relating in any way to interLATA service can only be effective upon, and are subject to, the approval and

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<sup>16</sup> Id. at ¶ 252.

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implementation by the Commission of regulations pursuant to Section 276 that authorize BellSouth to provide such service. The Commission need not and should not make any additional determinations regarding the enforceability of agreements executed between February 8, 1996 and the date of such approval.

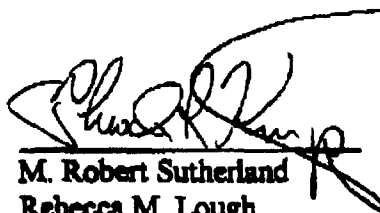
### CONCLUSION

For the foregoing reasons, BellSouth requests that the Commission grant the relief sought by BellSouth in its Petition for Reconsideration and Clarification.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I have on this 28th day of October, 1996 served all parties to this action with a copy of the foregoing OPPOSITION AND COMMENTS by placing a true and correct copy of the same in the United States mail, postage prepaid, addressed to the parties listed on the attached service list.

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